IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

Commissioner of Income Tax-II **VS.** Shri Ashok Kumar Soni.
Jodhpur.

D.B. INCOME TAX APPEAL NO.90/2001
against the order dated 31.5.2001 passed by Income Tax Appellate Tribunal, Jodhpur Bench, Jodhpur in ITA No.478/JDPR/99 for Assessment Year 1987-88 to 1997-98

Date of judgment : 28th July, 2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Sangeet Lodha for the petitioner.
Mr. Rajendra Mehta for the respondent.

BY THE COURT:- (Per Hon'ble Mr. Rajesh Balia, J.)

This appeal is directed against the order of the Income Tax Appellate Tribunal, Jodhpur Bench, Jodhpur dated 31st May, 2001. At the time of admission, following two questions were framed as substantial questions of law arising for consideration in this

appeal:-

(i) Whether the Tribunal was justified in ignoring the admission merely on the basis of later retraction in spite of its coming to the conclusion that any exercise of coercion or duress or threat by the search officials on the assessee or assessee's father, has not been established or proved in the instant case?

(ii) Whether there was any material on record on the basis of which it can be held that the admission made by the assessee during the course of search in his statement stood clarified and the presumption arising therefrom stood rebutted?

The question relates to addition made by the Assessing Officer in the income of the assessee-respondent as undisclosed income on the basis of undisclosed investment made in the construction of house property in question during the period of block Assessment for Assessment Years 1987-88 to 1997-98.

The undisputed facts are that on 3.1.1997, the authorised officer conducted the search on the residential premises and business premises of Shrichand Soni, father of the assessee. As a result of aforesaid search the assessment officer resorted to assess the assessee for block assessment period as noticed above.

The residential premises were belonging to respondent Assessee Ashok Kumar Soni, the elder son of Shrichand Soni, who was residing there with him along with his other son. During the course of search, the statement of Shrichand Soni as well as the assessee were recorded. On the basis of said statements, the Assessing Officer considered that the assessee has made investment in construction of house property to the extent of Rs.14,50,000/- out of his undisclosed income. In pursuance of notice issued under Section 158 BC and 158 BD for block assessment, the assessee has filed his return in which he has disclosed Rs.7,50,000/- as investment made for construction of

house out of his income from undisclosed sources. The extent of amount disclosed as invested in the construction of house was not acceptable to the Assessing Officer on the basis of statement made by the Assessee's father which according to the Assessing Officer, the son has ratified in toto. He made additions in the investment of income from undisclosed sources to the extent of Rs.14,50,000/- in stead of Rs.7,50,000/- disclosed by the assessee as income from the undisclosed sources and invested in the house.

According to the assessee, his total investment in the construction of house was Rs.14,50,000/-. After adjustment of the investment already disclosed in his books of accounts as he had surrendered the additional investment by way of income from undisclosed sources in response to notice under Sec. 158 BC.

The addition made by the Assessing Officer in respect of investment made in construction of house during the period covered by block Assessment Years was affirmed by the CIT (Appeals) vide his order dated

3rd August, 1999.

The Tribunal after taking into consideration the statement of Shrichand Soni, father of the assessee and assessee's own statement, during the course of search, the subsequent statement of son recorded in the course of regular proceedings, the valuation report in respect of house in question produced by the assessee as well as the valuation report submitted by the Department Valuation Officer to whom valuation has been referred to, upheld the contention of assessee and restricted the assessment of income from undisclosed sources invested in house property to the amount declared by assessee at Rs.7,50,000/-.

As the question suggested, the Revenue contended that since the admission made by the assessee in his statement under Section 132 (4) was not found to be under any coercion, the Tribunal has erred in law in acting on the statement which contains admission of the assessee. Hence, the finding recorded by the Tribunal is vitiated and, therefore, the additions

made by the Assessing Officer on the basis of admissions contained in the statement of father of the assessee under Section 132(4) which according to the Revenue was ratified by the assessee must be brought to the tax.

Since the matter rest on reading or misreading of the statement recorded by the Revenue Authorities during the course of search, we required the appellant to produce the record of search proceedings.

From the perusal of the order of the Tribunal, we find that the Tribunal has nowhere stated that it is relying only on retraced statement but a perusal of Tribunal's order goes to show that it has correctly stated principle regarding the evaluation and evidenciary value of admissions of any person. It has merely stated that the admissions are relevant and strong piece of evidence that may be used against the person making such admission but they are not conclusive proof of the statement contained in the admission and can always be explained. The Tribunal

also was of the view that once the admission made in the earlier statement is retraced, the second statement has to be read together to evaluate the weight of the admission for the purpose of appreciating the evidence. The principles are correctly stated by the Tribunal.

Apparently, it cannot be said that in stating the principle regarding evidenciary value of admission, the Tribunal either ignored the admissions made by Shrichand or Ashok Kumar from its consideration or has acted merely on recorded statement of the assessee. As a matter of fact, the whole discussion in the order under appeal goes to show that everything has gone in the process of evaluating the material available on record which included the statements made by the assessee and assessee's father and the assessee's note on the foot of statement of Shrichand Soni during the search proceedings and the disclosure already made in the books of accounts and estimated value of the investment made in the house, the subject matter of consideration. In appreciating the oral statements the Tribunal has also taken into consideration the report of

Departmental Valuation Officer to whom it was referred to. Hence, the finding recorded by Tribunal is not merely on the basis of retracted statement of Ashok Kumar Soni but is result of entire relevant material available on record, including the alleged admission attributed to assessee and statement of his father. What value is to be attached in totality of available material to the alleged admission of the assessee and whether previous statement is explained or not are all questions falling in the realm of reaching finding of fact by appreciating evidence. Such finding is not vitiated merely by reading one part of evidence, which has otherwise duly gone into consideration by the final fact finding Authority, which in the case of Assessment Proceedings is the Tribunal.

We find from the material available on record that the assessee himself in his statement recorded under Section 132(4) has merely stated that he has purchased the constructed house for Rs.8,50,000/-. So far as the investment in construction of house is concerned, the same is recorded in his books of account. That was

only statement in his statement recorded under Section 132(4) during the search, on the very date, when his father's statement was recorded.

Shrichand in his statement while at one stage stated that Rs.23,00,000/- has been invested in the construction of house and Rs.14 lacs has been invested which is from the undisclosed sources at another place he has stated that so far as the investment in his son's house is concerned, which is about Rs.14,50,000/- and about which his son would be paying the tax. At the foot note of the statement, which translated into English reads that 'he is ready to pay tax in regard to the declared investment of Rs.14,50,000/- in the construction of his house'.

There is no dispute on the fact about the valuation reports. According to valuation report of approved valuer the valuation of the house is Rs.14,50,000/-. The Departmental Valuation Officer has estimated the value of the constructed house at Rs.15.97 lacs and the third valuation report is from the

Land and Building Tax Department. According to which the market value of the house is Rs.17.57 lacs.

The statement of Ashok Kumar Soni was recorded on the very date the statement of his father was recorded does not containany such admission that he has invested Rs.14,50,000/-. The Assessing Officer was not at all adverted to assessee's own statement about investment made in construction of house property while making reference to foot note appended to statement of Shrichand his father. The statement of father of assessee cannot be considered as admission of his assessee on and the same could not be read as his admission. It may be noticed that report about market value of property on a given date, which is after the investment has been made is not of exact amount of investments made when property is acquired or constructed. Ordinarily in the case of immovable property valuation report of later date than acquisition of construction represents appreciated value of property at which it can be sold in open market or its estimated replacement cost.

It is trite to say that admissions are relevant piece of evidence and are not conclusive proof of fact. An admission can always be explained once this position is accepted, the question remains of appreciating evidence which is on record, which includes the evidence in the form of attending circumstances and the statements by which the previous statement is sought to be explained. Since the Tribunal after taking into consideration accepted the contention of the assessee that declaration about the undisclosed income used in investment is acceptable, the finding being a finding of fact on the basis of record, cannot be said to be vitiated.

Therefore, in our opinion, the question No.1 has to be decided against the Revenue and in favour of the assessee that Tribunal has not acted merely on the basis of retracted statement of assessee but has acted and reached its conclusion by taking into consideration all relevant material.

The question No.(ii) being an ancillary and part of question No.1, need not be considered independently.

Accordingly, the appeal fails and is hereby dismissed. No order as to costs.

[GOPAL KRISHAN VYAS], J. [RAJESH BALIA], J.

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